

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD A. DARCY and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Castle Point, NY

*Docket No. 00-897; Submitted on the Record;
Issued April 5, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained a recurrence of disability on or after July 16, 1996 causally related to his March 24, 1995 employment injury.

This case is before the Board for the second time. In the first appeal, the Board set aside the Office of Workers' Compensation Programs' April 22 and January 4, 1997 decisions. The Board found that the reports from the Office referral physician, Dr. Robert Conciatori, a psychiatrist, and appellant's attending physician, Dr. Robert Kammerman, a Board-certified psychiatrist, were sufficient to warrant further development of the evidence on the issue of whether appellant sustained a recurrence of disability on July 16, 1996 due to his March 24, 1995 employment injury of depression, single episode.¹ The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

On remand, the Office referred appellant, together with the case record and an amended statement of accepted facts, to Dr. Jeffrey Newton, a Board-certified psychiatrist, for a second opinion evaluation. By decision dated August 31, 1999, the Office denied appellant's claim on the grounds that the weight of the medical evidence, as represented by the opinion of Dr. Newton, established that appellant did not sustain a recurrence of disability causally related to his accepted employment injury.

The Board finds that the case is not in posture due to a conflict in medical opinion.

As discussed in the prior appeal, in a report received by the Office on March 11, 1997, Dr. Kammerman, appellant's attending Board-certified psychiatrist, related that he had treated appellant since March 31, 1995 for major depression "that was and is clearly reactive to a set of stresses connected with his work." Dr. Kammerman stated:

¹ Richard A. Darcy, Docket No. 97-2337 (issued May 10, 1999).

“The illness that I continue to treat up to the present time is the same illness I started treating in March 1995. We are using high doses of both anti-depressants and anti-anxiety medicine and have been consistently since the beginning. Even with this medicine, [appellant] remains very depressed, unable to concentrate and crippled with anxiety and suicidal ideation. Every progress note of my treatment relates his symptoms to his stress at work. While he would occasionally improve, he would always regress with a new round of work stress. Reading my progress notes, it is impossible for me to understand how anyone can conclude I have been treating separate illnesses. The work-related depression I am treating today is the same illness I treated in March 1995.”

Dr. Kammerman concluded that he hoped that “this clarifies my long-held position that I believe [appellant] has been continuously ill and disabled by work stress that he first succumbed to in March 1995.”

In a report dated July 8, 1999, Dr. Newton, the Office referral physician, discussed appellant’s medical history, described his current complaints and reviewed the medical evidence of record. He diagnosed major depression and stated:

“The state of upset that [appellant] endured in the spring of 1995, is related to stress (accepted as compensable) stemming from how he experienced the duties of supervising and disciplining subordinates. This type of stress was not present following his return, especially when his duties changed, and he took on what he described as the more congenial (to him) job of advocating for patients. On the other hand, a different type of stress (accepted as noncompensable) is reflected in the statement, ‘your service began to be dismantled subsequent to your first absence from work, and this process continued during your return to work.’ The activities encompassed by this statement likely correspond to those described, by Dr. Kammerman, with quite a different slant, as being both the cause of [appellant’s] decomposition in the summer of 1996, and the reason for the claimant’s decision (with Dr. Kammerman’s approval) not to seek to return to work later that fall.

“It is, therefore, my opinion that [appellant’s] disability of March to July 1995, did not recur in 1996. I believe that his 1996 disability stemmed from a substantially different type of workplace stress which, being accepted as noncompensable, renders the disability from 1996 on correspondingly noncompensable.”

In an accompanying work restriction evaluation, Dr. Newton opined that appellant could not return to his usual employment.

Section 8123(a) of the Federal Employees’ Compensation Act provides that when there is disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to

resolve the conflict.² When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.³

The Board finds that there is a conflict in the medical evidence under section 8123(a) between Dr. Kammerman, who found that appellant's depression continued from March 1995, and Dr. Newton, who found that appellant was not disabled beginning July 16, 1996 due to compensable employment factors. The Office should refer the relevant factual and medical records to an appropriate specialist for a reasoned opinion regarding whether appellant sustained a recurrence of disability on or after July 16, 1996 causally related to his March 24, 1995 employment injury. After such further development as the Office deems necessary, it should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated August 31, 1999 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Dated, Washington, DC
April 5, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

² 5 U.S.C. § 8123(a); *Robert W. Blaine*, 42 ECAB 474 (1991).

³ *Gertrude T. Zakrajsek (Frank S. Zakrajsek)*, 47 ECAB 770 (1996).